

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
Pico Power Project)	02-AFC-3
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 16, 2003

2:04 p.m.

Reported by:
Peter Petty
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

Matthew Trask, Project Manager

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Scott A. Galati, Attorney
Galati & Blek, LLP

Leslie J. Ward, General Manager
Pico Power Project
James H. Pope, Director of Electric Utility
John C. Roukema, Assistant Director of Electric
Utility
Silicon Valley Power
City of Santa Clara

Andrea E. Grenier, Principal
Argonaut Consulting
Environmental Project Manager
Pico Power Project

Douglas M. Davy, Consulting Scientist
Tetra Tech FW, Inc.

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P R O C E E D I N G S

2:04 p.m.

PRESIDING MEMBER GEESMAN: I'm John

Geesman, a member of the California Energy Commission. This is the prehearing conference for the Pico Power Plant.

To my right is Gary Fay, the Hearing Officer, who will be conducting the hearing. And I think the best thing for me to do is turn it over to you.

HEARING OFFICER FAY: Thank you, Commissioner Geesman. Welcome, everybody.

This prehearing conference was noticed on, I believe, March 24th. And I will be going through just what we need to accomplish today, but first I'd like to take appearances from the parties. Can everybody hear me all right? All right.

So, let's begin with Mr. Galati.

MR. GALATI: My name is Scott Galati. I'm the counsel to the Pico Power Project. On my left is Leslie J. Ward; he is the General Manager of the Pico Power Project.

And behind me we're supported by Andrea Grenier, who is a consultant. And also Doug Davy

1 with Tetra Tech Foster Wheeler, who is a
2 consultant in charge of preparing the AFC.

3 Also in the room we have Mr. Jim Pope,
4 who is the Director of the Silicon Valley Power;
5 and I believe John Roukema, who is the Assistant
6 Director for Silicon Valley Power.

7 HEARING OFFICER FAY: Thank you. Mr.
8 Ratliff.

9 MR. RATLIFF: I'm Dick Ratliff, Counsel
10 for Staff. And with me is Matt Trask who is the
11 Project Manager.

12 HEARING OFFICER FAY: Okay. Is there
13 any representative from CAPE, from CURE? Okay. I
14 hear no indication.

15 Ms. Mendonca, you're here as the Public
16 Adviser.

17 MS. MENDONCA: Yes.

18 HEARING OFFICER FAY: And have you heard
19 from anybody on this case?

20 MS. MENDONCA: Thank you for asking.
21 Roberta Mendonca, the Public Adviser's Office. My
22 office has had very little indication from the
23 community that they have other than support for
24 this project. So I know of no one that's going to
25 be calling in today. Thank you.

1 HEARING OFFICER FAY: Okay, thanks. And
2 are there any agency representatives here? Okay,
3 I see no indication. All right, thank you.

4 Just by way of background, as explained
5 in our notice, the basic purpose of the prehearing
6 conference is to assess the parties' readiness for
7 hearings; to clarify areas of agreement or
8 dispute; to identify witnesses and exhibits; to
9 determine upon which areas parties desire to
10 cross-examine witnesses; and to discuss associated
11 procedural items.

12 This is not a time to take evidence.

13 To keep to the purposes of the
14 prehearing conference we required in the notice
15 that any party who wants to participate today file
16 a prehearing conference statement by April 11th.
17 And we received prehearing conference statements
18 from the applicant and staff.

19 Relevant documents for today's
20 prehearing conference include the staff assessment
21 that was issued on March 26th; the prehearing
22 conference statements of the two parties; and just
23 filed the other day, applicant's suggested
24 modifications.

25 And I'd just call your attention to the

1 fact that as an attachment to its prehearing
2 conference statement the applicant filed an
3 exhibit list, a proposed exhibit list, and we have
4 copies of that on the counsel table. And we'll
5 probably just go with these numbers and then add
6 the staff documents sequentially after that.

7 First of all, I'd like to discuss the
8 case schedule a little bit before we get into the
9 substantive topics. The first question is does
10 the applicant have a date when it would propose
11 filing its testimony before the hearings?

12 MR. GALATI: Yes, before the hearing we
13 could file our testimony by the 30th.

14 HEARING OFFICER FAY: Okay. And there
15 was mention of staff addendum. Is that an
16 addendum to this original SA part one?

17 MR. TRASK: Correct.

18 HEARING OFFICER FAY: Okay, and when
19 will that be filed?

20 MR. TRASK: Our target date is the 28th,
21 unless that's a weekend.

22 PRESIDING MEMBER GEESMAN: I think
23 that's a Monday.

24 MR. TRASK: I believe it is Monday.
25 Yes.

1 HEARING OFFICER FAY: Yes, that is a
2 workday, so I guess you're locked in.

3 And how about briefs? Applicant
4 suggested May 21st. I just want to remind
5 everybody that if we have a short hearing, for
6 instance about four hours of hearing time, then it
7 would probably take six or seven days to get the
8 transcript. If that's the case, then filing
9 briefs on May 21st would leave you one week with
10 the transcripts. Is that still satisfactory?

11 MR. GALATI: That's still satisfactory
12 to the applicant.

13 HEARING OFFICER FAY: Mr. Ratliff?

14 MR. RATLIFF: Yes.

15 HEARING OFFICER FAY: Okay. Do the
16 parties see any need at this time for reply
17 briefs?

18 MR. RATLIFF: No.

19 MR. GALATI: I actually don't see that,
20 any need for that.

21 HEARING OFFICER FAY: Okay, let's assume
22 no reply briefs. And so you can assume May 21st
23 will be the order for filing briefs. This will
24 all appear in the hearing order for the
25 evidentiary hearings, but we might as well tell

1 you what is going to be in the order.

2 At this point what is the most likely
3 date for the preliminary determination of
4 compliance from the Air District?

5 MR. TRASK: May 1st.

6 HEARING OFFICER FAY: May 1st, okay.
7 And how about a likely date for the staff
8 assessment part two that covers air quality and
9 alternatives?

10 MR. TRASK: I'll give you a range; I
11 hope that's acceptable. Between May 14th and May
12 21st.

13 HEARING OFFICER FAY: Okay.

14 MR. TRASK: The air quality staff has
15 asked for a minimum of two weeks for their part of
16 it.

17 HEARING OFFICER FAY: Okay, let's just
18 assume May 21st, just so we don't get squeezed.
19 I'm not so concerned about giving staff ample
20 time; it's just that if it turns out to be on the
21 late side, and we've anticipated hearings, et
22 cetera, we might have a problem.

23 How about the date for applicant to file
24 testimony? If staff files on May 21st.

25 MR. GALATI: I believe that because it's

1 been bifurcated this way that there might be a
2 workshop involved on that staff assessment. So I
3 think we would be five days, at a minimum, after
4 the workshop to adequately reflect whatever we've
5 worked out.

6 So, if --

7 MR. TRASK: We intend to schedule the
8 workshop within a matter of a few days, let's say
9 we'll assume the 24th. And we could be as much as
10 a week before that.

11 HEARING OFFICER FAY: Okay, the 24th is
12 a Saturday, but if you had the workshop two days
13 later --

14 MR. TRASK: 23rd then.

15 HEARING OFFICER FAY: -- that would be
16 the 23rd, that's a Friday. That would be probably
17 the soonest you could do it.

18 MR. TRASK: The only issue will be
19 whether or not the applicant feels they have
20 enough time to review our staff assessment. What
21 I think we can do is probably release a draft
22 version, maybe, I'll have to see if we can do
23 that. That'll give you some extra review time.

24 MR. GALATI: I think since it's only
25 going to include the two sections, one of which

1 we're already very familiar with, which is the air
2 quality section, I think that we will have the
3 PDOC by then, so we'll have at least the bulk of
4 the conditions.

5 I think we could do it in a couple of
6 days and be productive at the workshop.

7 HEARING OFFICER FAY: Okay. And then
8 you say you'd need a week after the workshop?

9 MR. GALATI: Again, that would put us, I
10 think we could file testimony by Wednesday or
11 Thursday the following week. Again, we're only
12 going to be filing testimony on those two subject
13 areas. So I think we can utilize the weekend.

14 And since it probably places more of a
15 burden on me than others, I'll take Wednesday,
16 which is the -- is that the 29th?

17 HEARING OFFICER FAY: Looks like May
18 28th.

19 MR. GALATI: May 28th.

20 HEARING OFFICER FAY: We've got a
21 Memorial Day weekend in here. Maybe that's not a
22 factor.

23 MR. GALATI: What's that?

24 HEARING OFFICER FAY: There is a
25 Memorial Day weekend in there on the 26th.

1 MR. GALATI: Those weekends are made for
2 working.

3 HEARING OFFICER FAY: That's right. All
4 right, I put down May 29th for applicant to file;
5 a little more room in case there's some surprises.

6 And then when would you be ready to go
7 to hearings?

8 MR. GALATI: We'd be ready the following
9 week.

10 HEARING OFFICER FAY: One week later?

11 MR. GALATI: Yeah, I think there's a
12 requirement of a minimum of five days, our
13 testimony be filed five days prior to hearing, I
14 believe.

15 HEARING OFFICER FAY: I think the
16 earliest date that we know we can have a hearing
17 would be Monday, June 16th. Would that work for
18 the staff?

19 MR. RATLIFF: Yes.

20 HEARING OFFICER FAY: Would that work,
21 how about for the applicant, is that acceptable?
22 And if that's the date we use, we could actually,
23 you know, slip your filing date, just in case the
24 workshop was a little bit later.

25 MR. GALATI: If there is a possibility

1 of doing it earlier, because we --

2 UNIDENTIFIED SPEAKER: I'm going to go
3 check.

4 MR. GALATI: Okay, thank you. We
5 certainly don't want to squeeze Mr. Fay at the end
6 of the process with the PMPD. So, --

7 HEARING OFFICER FAY: Well, the earliest
8 that I could do it would be like Wednesday the
9 11th. You know, I'll be gone the previous week
10 and a half, and I need a few days with the
11 testimony.

12 So, Commissioner Geesman is going to
13 check on those last three days of the week, June
14 11, 12 and 13.

15 And then do you anticipate the same sort
16 of sequence on briefs, just two weeks later have
17 the briefs --

18 MR. GALATI: I'm sorry --

19 HEARING OFFICER FAY: Okay, and then
20 briefs two weeks later?

21 MR. GALATI: We're going to try to
22 prepare our brief ahead of time. We think that
23 most of the issues will be resolved. And we can
24 have a deadline for two weeks later, we're going
25 to substantially beat that deadline.

1 HEARING OFFICER FAY: Well, if you don't
2 have a transcript you're not going to be citing to
3 the record.

4 MR. GALATI: We're going to do our best
5 and will certainly cite to the record as soon as
6 that transcript is available. But I don't think
7 we'll -- our goal would be, and we hope that we
8 would be doing much of air quality on declaration
9 and not having a dispute with staff. And if so,
10 we would be filing to a lot of written exhibits --
11 citing to a lot of written exhibits and then
12 augmenting that brief as soon as the transcript is
13 available to recognize when those were actually
14 admitted into evidence.

15 So, I think that honestly we'd need one
16 day after the transcript was available.

17 HEARING OFFICER FAY: Okay.

18 MR. TRASK: Mr. Fay, staff does not
19 anticipate needing the transcript to prepare our
20 briefs or any documents for the hearing.

21 MR. RATLIFF: I'd just add that we would
22 probably need the transcript if we were
23 adjudicating issues, but we haven't anticipated
24 that we're actually going to adjudicate any
25 issues. So we think that probably any brief that

1 we would write would rely principally on the
2 written testimony.

3 So we think we could probably do that
4 more expeditiously. That's assuming --

5 HEARING OFFICER FAY: Well, if you
6 both --

7 MR. RATLIFF: -- assuming we don't --

8 HEARING OFFICER FAY: -- think that's
9 likely to be the case, we can say one week, one
10 week later.

11 MR. GALATI: Actually we hope we get a
12 hearing date on the 11th, so it would be June
13 17th.

14 MR. TRASK: Right, so hearing plus one
15 week.

16 HEARING OFFICER FAY: Okay. All right,
17 let's move to the prehearing conference
18 statements.

19 For the applicant, do you have any
20 corrections or revisions to your statement?

21 MR. GALATI: Actually I don't believe
22 that we do. We are still waiting for a written
23 confirmation from U.S. Fish and Wildlife Service.
24 And we're working -- our understanding is that
25 there is an individual at U.S. Fish and Wildlife

1 Service who has been out this week, will be back
2 next week. And we anticipate getting that written
3 confirmation within the next week or so.

4 HEARING OFFICER FAY: Okay.

5 MR. GALATI: That will then allow us to,
6 in our testimony by the 30th, describe how we no
7 longer have a dispute in biological resources. So
8 we still think we're on track for that.

9 HEARING OFFICER FAY: Now, in a worst
10 case scenario is it possible to move forward
11 without that confirmation with the understanding
12 that you have agreed to a certain level of
13 mitigation, and you could describe on the record
14 the reaction you've gotten from the Service on
15 that?

16 They're going to require whatever it is
17 they require, and that would be binding on the
18 Commission even after a decision came out. So I
19 don't anticipate that that would have to hold
20 anything up.

21 MR. GALATI: What's really holding it
22 up, Mr. Fay, is a commitment from the U.S. Fish
23 and Wildlife Service as to the process that they
24 would -- the ability to expedite our process in
25 consultation with them. And not necessarily the

1 substance.

2 HEARING OFFICER FAY: Well, going back
3 to the schedule, Commissioner Geesman says that if
4 this is going to be a half-day hearing, and it
5 sounds like the parties are anticipating, you
6 know, pretty smooth sailing on those two topics,
7 then it could be done Wednesday after the business
8 meeting.

9 PRESIDING MEMBER GEESMAN: Which would
10 be Wednesday, the 11th.

11 HEARING OFFICER FAY: Wednesday, the
12 11th. So we could start at 2:00.

13 MR. GALATI: I think that would be very
14 helpful.

15 HEARING OFFICER FAY: Okay.

16 MR. RATLIFF: There is one complication
17 to the air quality hearing, and that is that we
18 anticipate that the PDOC will come out
19 approximately the end of this month. The Air
20 District then has a 30-day comment period for the
21 PDOC. And after that, publishes the FDOC.
22 Sometimes, you never know exactly how long it will
23 take them to actually publish the FDOC. Depends
24 on how many comments they get usually.

25 Therefore, we don't know exactly when

1 we'll have an FDOC; and we don't know whether it
2 will vary in an meaningful way from the PDOC.
3 Which might complicate the timing of when you
4 would actually put that issue to rest.

5 I just raise that without knowing what
6 the answer is, but it may mean that at a minimum
7 you would have to leave the record open until you
8 got the FDOC.

9 HEARING OFFICER FAY: If the parties
10 were anticipating certain things in the FDOC --
11 well, first let me back up. Is it true that the
12 staff feels comfortable filing its testimony
13 without the FDOC?

14 MR. RATLIFF: Go ahead.

15 MR. TRASK: I think that what I might
16 suggest is that we hold the prehearing conference
17 on that issue at the same time we have the hearing
18 for this phase. By then the PDOC should be out,
19 and I think we would have a good idea what, if
20 any, issues remain to be resolved in the DOC
21 process.

22 HEARING OFFICER FAY: Okay.

23 MR. TRASK: Right now we don't
24 anticipate that there would be any need to wait
25 for the FDOC, but we just don't know.

1 HEARING OFFICER FAY: All right, so
2 that's a possibility. So that on May 7th we'll
3 have a better idea of whether staff feels
4 comfortable going ahead with that. And if that's
5 the case, we could shoot for that June 11th
6 hearing date with the understanding that, best
7 case scenario, it wouldn't matter if the FDOC was
8 out. If staff had reservations then we would
9 perhaps pick a day a week later or something to
10 try to be sure that the FDOC --

11 MR. TRASK: I believe it's possible we
12 could still make that date, even if we do wait for
13 the FDOC. If it proceeds on time we would have
14 that approximately the first week of June. We
15 could then do our addendum, if needed, shortly
16 after that and still probably make right around
17 the 11th.

18 MR. GALATI: And the other thing, if I
19 could inform the Committee, it appears that from
20 all the work that's been done on this PDOC that
21 the potential for discrepancy revolves around one
22 condition, and specific excursion language to that
23 condition.

24 So I didn't want to give the Committee
25 the impression that there were, as you can see

1 there's not a lot of public interest in the
2 project, in opposing it; there is not an active
3 intervenor. We don't anticipate significant
4 comments, except if there are any comments it's
5 most likely going to be on that one issue.

6 So we would like to really shoot for
7 this day on the 11th, and proceed and have the
8 FDOC be -- the record left open and the FDOC
9 entered into the record after that stage, in case
10 it does come in late.

11 But we're not anticipating that it will
12 be significantly later.

13 HEARING OFFICER FAY: Okay. All right,
14 let me just ask you then, which topics you think
15 you will not be submitting on declaration, since I
16 assume most will be coming in on declaration. And
17 right now I'm referring to our first set of
18 hearings, so let's forget about air quality and
19 alternatives.

20 So, Mr. Galati, if you can tell me which
21 ones you plan to have witnesses present for, and
22 we'll start with that.

23 MR. GALATI: Basically there would only
24 be one, and it would be project description.
25 Wanted to make sure the Committee understood the

1 project, and the project objectives and purpose.

2 So we wanted to have a panel testify for
3 approximately 15 minutes to further explain the
4 project.

5 All of the other areas, and again our
6 approach would be, with biological resources, is
7 to not make a dispute where one is not likely to
8 exist. And if we did not receive our confirmation
9 from U.S. Fish and Wildlife Service we would be
10 asking you to postpone the biological resources
11 hearing until part two, the part two hearings, so
12 that we could, once again, submit that upon
13 declaration; as opposed to having the dispute when
14 it's likely going to be taken off the table. It's
15 just a matter of getting written confirmation of
16 that.

17 So, with that in mind, although we've
18 proposed some conditions, modification to
19 conditions, many of which have been accepted by
20 staff in the workshop, some of which they needed
21 more time to anticipate, even if there was a
22 change, if we didn't have full agreement on the
23 conditions, we believe we could handle that in our
24 briefs.

25 HEARING OFFICER FAY: Okay. And when

1 would we know if you're going to request putting
2 over biological resources? The day of the hearing
3 or would we know before then?

4 MR. GALATI: You will know with the
5 filing of our testimony on April 30th.

6 MR. TRASK: I had filing of testimony on
7 the 28th. Did I miss that date?

8 MR. GALATI: I think that's your errata
9 which we need to see to say we agree with it or
10 not.

11 MR. TRASK: Oh, you're right, I'm sorry.

12 HEARING OFFICER FAY: Yeah, staff was
13 planning on filing its addendum on the 28th.
14 Applicant was going to file its testimony on April
15 30th.

16 All right, so just that one topic, then,
17 with witnesses?

18 MR. GALATI: Yes, that's it.

19 HEARING OFFICER FAY: Okay. All right.
20 Any comments on the staff prehearing conference
21 statement?

22 MR. GALATI: I think that staff
23 anticipated maybe a possible dispute or evidence
24 of cultural resources, which we do not intend to
25 bring. We have some suggestion modifications that

1 we feel can be handled in a brief if at all
2 necessary.

3 But we have submitted our comments on
4 the staff assessment, which are very nicely
5 prepared by Doug Davy, which basically lays out
6 the comments on the actual staff assessment; and
7 then an attachment which is proposed modifications
8 to the conditions.

9 And we filed this early. Comments were
10 due on the 25th. We filed this yesterday hoping
11 staff would have an opportunity to look at it and
12 use it in use for their addendum. Much of what is
13 repeated in here has been agreed in our workshop.
14 And there's only probably, I think, about four or
15 five conditions that staff's still thinking about.

16 HEARING OFFICER FAY: And the
17 recommendations that you just referred to that you
18 filed with the comments, are those the same as the
19 ones we received yesterday or the day before?

20 MR. GALATI: Correct. Yesterday by
21 email I also sent to the Committee and Dick
22 Ratliff just the portion of the conditions which
23 is included in the comments on the staff
24 assessment, since we were supposed to do that in
25 our prehearing conference. I didn't have it

1 finished.

2 HEARING OFFICER FAY: Okay. All right,
3 let's turn to the staff, then. Any corrections to
4 your prehearing conference statement?

5 MR. TRASK: Well, we would certainly
6 agree with Mr. Galati to remove all references to
7 any potential issue with cultural resources.

8 And beyond that I'm not aware of any
9 changes we'd want to make.

10 HEARING OFFICER FAY: So, the language
11 modification suggestions the applicant proposed
12 are acceptable to staff?

13 MR. TRASK: We have not quite reached a
14 conclusion on all of them. I'd say we're within a
15 day or two --

16 HEARING OFFICER FAY: But you think it's
17 the kind of thing you could handle in briefs, even
18 if there was a dispute?

19 MR. TRASK: Easily.

20 HEARING OFFICER FAY: Okay.

21 MR. TRASK: Easily.

22 HEARING OFFICER FAY: Any other changes?

23 MR. TRASK: Well, I would like to update
24 maybe a little bit on item number 8 about the
25 BAAQMD. We've had considerable amount of

1 discussions on that recently, and we're scheduled
2 to teleconference tomorrow at 10:30 a.m. with the
3 Bay District, USEPA and the ARB to go over the
4 most recent BACT proposal. After which we believe
5 that it would be a very short time producing the
6 PDOC. So that's why we remain confident.

7 MR. GALATI: Mr. Fay, if I may add to
8 that, I'd like to express our thanks to management
9 and Mr. Trask and Mr. Ratliff for helping us
10 resolve getting this PDOC out quickly. There are
11 some issues that staff may have with the
12 particular excursion language, and it appears
13 clear to us that management will communicate to
14 the District that they should issue their PDOC
15 which what they feel is best and allow the comment
16 period and/or in hearings at the Energy Commission
17 to work out the details.

18 And so we appreciate that approach and
19 we think that that's going to keep us on schedule.
20 And we'd like to thank management for stepping in
21 and helping us with that.

22 HEARING OFFICER FAY: Yeah, I think
23 that's a good idea. The Committee certainly
24 prefers having these matters before us rather than
25 buried in an agency and thereby holding up the

1 process. The PDOC is a critical path item.

2 Changes can be made in our process, but
3 nobody can do anything if the document is not
4 forthcoming. So that's a good development.

5 Let me also ask if you'll be presenting
6 any witnesses from Cal-ISO or Fish and Game or
7 U.S. Fish and Wildlife?

8 MR. RATLIFF: No, we don't expect to.
9 But we assume that you will want, at a minimum, a
10 declaration from the Air District or his
11 appearance at the hearing, either way, to provide
12 the testimony you need under 25524, I believe,
13 regarding the air quality, satisfaction of the
14 District's requirements.

15 HEARING OFFICER FAY: Right and that
16 adequate offsets have been identified.

17 MR. RATLIFF: Would you prefer to have
18 that either by declaration or --

19 HEARING OFFICER FAY: Well, I think if
20 there's no dispute that by declaration would be
21 fine.

22 MR. RATLIFF: Okay.

23 HEARING OFFICER FAY: And save the
24 District a lot of time. And so if they could have
25 that available regardless of the status of the

1 FDOC, a statement that meets our statutory
2 requirements. But then, in addition, if the FDOC
3 is available, the declaration should include
4 reference to that, too, so that we can move that
5 in by declaration.

6 MR. RATLIFF: Okay, we'll discuss it
7 with the District and we'll report back to the
8 Committee at the prehearing conference for air
9 quality as to how -- by then we'll know a whole
10 lot more about whether we've resolved everything
11 and we can discuss it with the District whether
12 they'll provide a declaration, or whether Dr. Lim
13 will appear.

14 HEARING OFFICER FAY: Are there any
15 other things -- I know you just got the suggested
16 modifications. Is it immediately obvious that
17 that's cleared up any other areas, too? Or do you
18 just need more time to digest that?

19 MR. TRASK: We need a little bit more
20 time, but I don't anticipate it being an issue. I
21 anticipated everything being ready by today, but
22 we've been consumed by discussions on air quality
23 and it's just a matter of logistics and getting it
24 through. I don't anticipate any problem.

25 HEARING OFFICER FAY: Okay, good.

1 Excellent. Well, anything further from any of the
2 parties?

3 PRESIDING MEMBER GEESMAN: Timing on May
4 7th for a hearing. Sounds like it's a half a day?

5 MR. GALATI: Yeah, it's half a day.

6 PRESIDING MEMBER GEESMAN: Can we start
7 pretty early? I've got a confirmation hearing at
8 1:30 that afternoon.

9 MR. GALATI: You do not want to be late
10 to that.

11 PRESIDING MEMBER GEESMAN: No, the
12 Senate Rules Committee tells me I should
13 definitely not be late for that.

14 (Laughter.)

15 PRESIDING MEMBER GEESMAN: So if we
16 could start at 9:00 I would appreciate it.

17 MR. GALATI: That's great.

18 MR. RATLIFF: Am I to understand then
19 that we will submit -- staff will submit by
20 declaration its testimony and not present live
21 witnesses at the hearing? Is that correct? At
22 the May 7th hearing. Or do you want any
23 particular witnesses to appear at that hearing?

24 HEARING OFFICER FAY: Well, applicant
25 put two hours down for cross-examination on

1 biological resources. It's going to be tough to
2 use up the two hours if you don't have a witness
3 there to cross-examine.

4 (Laughter.)

5 MR. GALATI: If I could clarify. On our
6 filing on the 30th we will do one of two things.
7 Make it clear there is no dispute in biological
8 resources, or ask you to postpone the biological
9 resource section of the hearing to the air quality
10 hearing on June 11th.

11 So, no need to bring biology, and we
12 won't be bringing biology witnesses, as well. I
13 wanted to preserve our right to show that there is
14 a possibility of the need for adjudication in
15 issue, but I think it's probably better to
16 postpone it, rather than try to deal with that
17 dispute.

18 HEARING OFFICER FAY: Okay, good. In
19 that case it sounds like Mr. Trask is the only
20 witness we need. And what I anticipate, since
21 this will probably go pretty quickly, is that
22 we'll go topic by topic in the order of the staff
23 assessment. And with the exception of your live
24 witnesses for project description, then if you
25 would introduce each topic with a very brief

1 summary, and the project manager or you could do
2 that, and then if staff has nothing to add to the
3 description, we'll just ask if there's public
4 comment on that topic, and move on.

5 And just go, you know, in a lockstep
6 right down the list. It will be pretty fast. And
7 then at the end Mr. Ratliff had suggested that we
8 hold moving all the documents until the end, we
9 can do that. You just run down your list. And
10 we'll get them all into the record at that time.

11 So it should be pretty efficient.

12 MR. GALATI: Okay, so I don't need a
13 witness to sponsor a particular exhibit; it'll be
14 done in the written testimony. But at the end
15 I'll just identify them for the record and we'll
16 move them in?

17 HEARING OFFICER FAY: That's right.

18 MR. GALATI: Great.

19 HEARING OFFICER FAY: Or you can
20 identify them when you identify the topic. But
21 the point is that there'll be a declaration for
22 each piece of testimony. And that --

23 MR. GALATI: Right, I'd prefer to do it
24 at the end. I think that's a lot easier for me to
25 keep track of.

1 HEARING OFFICER FAY: Yeah, good. Okay.

2 MR. TRASK: One issue I feel I should
3 perhaps bring up. The applicant had requested
4 that the second hearing, the air quality hearing,
5 be held in Santa Clara.

6 MR. GALATI: That's correct, and --

7 MR. TRASK: If you're going to have that
8 on the afternoon after a business meeting that
9 will make that very difficult.

10 HEARING OFFICER FAY: That's new to me.
11 Our assumption about the afternoon was that it
12 would be here.

13 MR. GALATI: We're okay, we want the
14 11th.

15 MR. TRASK: I assumed that that's
16 probably the way they would go.

17 MR. GALATI: Yes.

18 (Laughter.)

19 HEARING OFFICER FAY: Not twisting your
20 arm, here, but --

21 MR. GALATI: No. Was I too quick --

22 HEARING OFFICER FAY: -- just a fact of
23 life in terms of logistics.

24 MR. GALATI: -- was I too quick on that?

25 HEARING OFFICER FAY: Yeah.

1 MR. TRASK: We'll consult with you about
2 having the workshop in Santa Clara, if that would
3 help.

4 MR. GALATI: Thank you.

5 HEARING OFFICER FAY: Yeah, that would
6 be helpful. Okay. Any other scheduling things?
7 No. Comments? Any public comments?

8 Commissioner Geesman, any inspirational
9 remarks --

10 PRESIDING MEMBER GEESMAN: No --

11 HEARING OFFICER FAY: -- to send us on
12 our way?

13 PRESIDING MEMBER GEESMAN: On to the
14 7th.

15 HEARING OFFICER FAY: Okay. Well,
16 that's all. Very efficient. Thank you all for
17 coming. We're adjourned.

18 (Whereupon, at 2:37 p.m., the hearing
19 was adjourned.)

20 --o0o--

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Prehearing Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18th day of April, 2003.

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